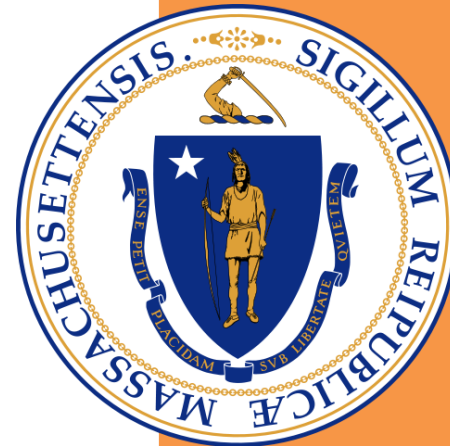


# Division of Administrative Law Appeals

The Executive Office for Administration and Finance  
Commonwealth of Massachusetts



Performance Report  
Fiscal Year 2013

Richard C. Heidlage  
Chief Administrative Magistrate

## A MESSAGE FROM THE CHIEF MAGISTRATE

This document provides the Division's first annual performance report. The Division's mission is to provide, on a timely basis and with the limited resources available to us, due process administrative adjudications that are a precondition of other agencies' operations. We are a "central panel," meaning that we are independent of the agencies for which we provide adjudications. We are therefore uniquely situated to provide adjudications and decisions that are both fair, independent and impartial in fact and that are perceived by the public to be so. We are meeting that fundamental objective and are proud of our performance in that regard.

Our performance and ability to meet the optimal delivery of due process continues to suffer, however, from the case backlog that had been built up over at least the last fourteen years. The existence of a backlog representing over three years of our current capacity to process cases translates into an ever increasing caseload age and delay for non-priority cases. Currently we are able to process only priority cases for the most part, those cases being the client agencies' enforcement cases and retirement disability cases. Non-priority, primarily public employment retirement enhanced benefit cases, continue to increase in age and adversely affect our case ageing statistics. While our current performance report demonstrates that we are making modest inroads into the backlog, our long-term performance shows that the only practical solution to reducing the backlog is the application of additional resources. For this reason we have proposed establishing a cadre of part-time, temporary contract magistrates who will be employed to hear backlog cases and large blocks of expedited cases that cannot be accommodated by the Division's permanent staff.

The experience of our decisions on judicial review, to the extent we can follow it, is excellent. We carry the status with a caution sign because we are just beginning to formally track this statistic and there are two factors that make tracking difficult. First, in enforcement cases in which our hearing and decision are only part of a process of reaching a "final agency decision," we are not a party to any subsequent appeal. Accordingly, we do not receive notice of

**As an agency affiliated with the Executive Office of Administration and Finance, the Division of Administrative Law Appeals' goals reflect and bolster the commitments of A&F to bring about Better Finance, Better Health Care, Better Performance and Better Government.**

**This report was developed pursuant to Executive Order 540, Governor Patrick's directive to embed strategic planning and performance management across state government. The Division of Administrative Law Appeals' FY13 Performance Report describes progress achieved against the goals set out in its 2013-2015 Strategic Plan.**

**Please send feedback  
regarding this report to:**

**Richard C. Heidlage  
Chief Administrative Magistrate  
Division of Administrative Law Appeals  
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Boston, MA 02114**

subsequent proceedings and only become aware of the outcome of cases that reach the Appeals Court or Supreme Judicial Court many years later. Normally, in those cases our decision is not specifically addressed unless the agency has formally adopted it as the final agency decision. Second, the appellate process normally takes many years to be completed. Accordingly, results at the appellate level this year have little bearing on our performance in the current fiscal year.

Finally, a comment about our target of a 90% affirmance rate. In every case our objective is to get the law right 100% of the time. However, the statutory provisions at issue in our cases are recognized by the courts to be among the most complicated in the law. Accordingly, an objective of 100%, although aspirational, would be unrealistic.

**Richard C. Heidlage**  
**Chief Administrative Magistrate**

## MISSION

**General Jurisdiction:** Provide the due process adjudications that are the pre-condition of other agencies' Final Agency Action

### **The Bureau of Special Education**




**Appeals:** Provide dispute resolution resources to resolve disputes among interested parties concerning special education services and procedural protections for students with disabilities






## VISION

To be recognized as the best choice for providing due process administrative adjudications and other forms of administrative dispute resolution in the Commonwealth







For the Division's procedures to be recognized as the standard for administrative dispute resolution in the Commonwealth

# PERFORMANCE DASHBOARD

STATUS LEGEND						
On Target (>= Target)		Close-to-Target (>= 80-99%)		Off Target (<80% of Target)		Not Applicable (N/A) -
Note: Descriptions for performance measures can be found on page 6						

GOAL	MEASURE	CURRENT PERIOD	PRIOR PERIOD	TREND	TARGET	STATUS	COMMENTS
General Jurisdiction							
Eliminate the current backlog of pending cases	# of General Jurisdiction cases in the backlog	2023	2068	Improving	<2068		FY13 vs. FY12. Excludes “rate cases” from the Division of Health Care Finance and Policy, as progress on these cases is limited primarily by resources of the parties and does not reflect the Division’s performance.
	# of General Jurisdiction cases opened	641	714	Stable	-		FY13 vs. FY12. Excludes “rate cases” for reasons stated above. Targets are not appropriate as they could give the appearance of inappropriately affecting selection of cases on which to expend limited resources
	# of General Jurisdiction cases closed	680	592	Improving	>641		FY13 vs. FY12. Excludes “rate cases” for reasons stated above. Target is to close more cases than are opened (thus reducing backlog).
Ensure timeliness and efficiency of adjudications	% of total General Jurisdiction case load open between 0-180 days	12.6%	14%	Worsening	-		FY13 vs. FY12. Targets cannot be set because different types of cases have different average durations, and the mix of cases is not within DALA’s control. The general trend will be for this to worsen as the backlog ages.
	% of total General Jurisdiction case load open between 181-365 days	12.3%	14%	Worsening	-		FY13 vs. FY12. Targets cannot be set because different types of cases have different average durations, and the mix of cases is not within DALA’s control. The general trend will be for this to worsen as the backlog ages.

GOAL	MEASURE	CURRENT PERIOD	PRIOR PERIOD	TREND	TARGET	STATUS	COMMENTS
	% of total General Jurisdiction case load open greater than 365 days	75.1%	72%	Worsening	-	—	FY13 vs. FY12. Targets cannot be set because different types of cases have different average durations, and the mix of cases is not within DALA's control. The general trend will be for this to worsen as the backlog ages.
	Ratio of General Jurisdiction hearings per cases closed	0.366	0.355	Stable	-	—	FY13 vs. FY12.
<b>Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications</b>	% of General Jurisdiction decisions affirmed	86.3%	Data not available	-	≥90%	▼	Data is for a five year rolling period. See "Measure Descriptions" table for more details on the calculation of this measure.
	% of General Jurisdiction decisions reversed or remanded	13.7%	Data not available	-	≤10%	▼	Data is for a five year rolling period. See "Measure Descriptions" table for more details on the calculation of this measure. Target is for % of decisions reversed + % of decisions remanded to be less than or equal to 10%, status determined based on overall goal of ≥90% of decisions affirmed.
<b>Develop mechanisms and procedures to minimize parties' costs and enhance customer service</b>	# of cases in remote locations	41	Data not Available	-	-	—	New program. Will set target as the program matures.

GOAL	MEASURE	CURRENT PERIOD	PRIOR PERIOD	TREND	TARGET	STATUS	COMMENTS
<b>Bureau of Special Education Appeals</b>							
<b>Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications</b>	% of Bureau of Special Education Appeals mediations resulting in agreement	86.2%	85.56%	Improving	Range: 80-90%		Federal FY13 vs. Federal FY12. BSEA Statistics are based on the federal fiscal year commencing October 1 of each year.
<b>Maintain current quality of dispute resolution of special education appeals</b>	# of Individualized Educational Programs (IEPs) in the Commonwealth	163,921	163,679	-	-		Federal FY13 vs. Federal FY12. Targets aren't appropriate as IEP cases are based on demonstrated need.
	# of IEP cases opened	9100	8460	-	-		Federal FY13 vs. Federal FY12. Targets aren't appropriate as IEP cases are based on demonstrated need.
	# of Facilitated IEPs conducted	140	143	-	-		Federal FY13 vs. Federal FY12. Targets aren't appropriate as IEP cases are based on demonstrated need.
	# of IEP mediations conducted	810	917	-	-		Federal FY13 vs. Federal FY12. Targets aren't appropriate as IEP cases are based on demonstrated need.
	# of IEP hearings held	30	52	-	-		Federal FY13 vs. Federal FY12. Targets aren't appropriate as IEP cases are based on demonstrated need.

## MEASURE DESCRIPTIONS

GOAL <sup>1</sup>	MEASURE	DESCRIPTION	DATA SOURCE
<b>General Jurisdiction</b>			
<b>Eliminate the current backlog of pending cases</b>	# of General Jurisdiction cases in the backlog	This measure tracks the total count of non-BSEA cases in the backlog by agency/category. It excludes “rate cases” from the Division of Health Care Finance and Policy, as progress on these cases is limited primarily by resources of the parties and does not reflect the Division’s performance.	Database
	# of General Jurisdiction cases opened	This measure tracks the total number of new non-BSEA cases opened by agency/category. It excludes “rate cases” from the Division of Health Care Finance and Policy, as progress on these cases is limited primarily by resources of the parties and does not reflect the Division’s performance.	Database
	# of General Jurisdiction cases closed	This measure tracks the total number of non-BSEA cases closed. It excludes “rate cases” from the Division of Health Care Finance and Policy, as progress on these cases is limited primarily by resources of the parties and does not reflect the Division’s performance.	Database
<b>Ensure timeliness and efficiency of adjudications</b>	% of total General Jurisdiction case load open between 0-180 days	This measure tracks the percent of the caseload, excluding BSEA and rate setting cases, open between 0-180 days.	Database
	% of General Jurisdiction total case load open between 181-365 days	This measure tracks the percent of the caseload, excluding BSEA and rate setting cases, open between 181-365 days.	Database
	% of General Jurisdiction total case load open greater than 365 days	This measure tracks the percent of the caseload, excluding BSEA and rate setting cases, open greater than 271 days	Database

<sup>1</sup> One of DALA’s goals, outlined in the strategic plan, “Foster use of DALA as a central panel for adjudications in the Commonwealth” and its two associated measures are not reported here. As DALA’s position as a central panel of adjudications is a matter of statute, measures tracking the number of agencies referring cases to DALA or utilizing DALA are not within the Agency’s control.

GOAL <sup>1</sup>	MEASURE	DESCRIPTION	DATA SOURCE
	Ratio of General Jurisdiction hearings per cases closed	This measure tracks the total number of cases heard divided by the total number of cases closed.	Manual record/database
Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications	% of General Jurisdiction decisions affirmed	This measure tracks decisions or recommended decisions adopted by agency or affirmed by the next administrative or judicial level for General Jurisdiction cases, divided by the total number of General Jurisdiction decisions issued. This statistic is not maintained by fiscal year as DALA normally will not know the disposition in courts until many years later. As a result, DALA reports the outcomes, to the extent it knows them, for all cases originally filed in the last five years on a rolling basis. For cases in which DALA issued a recommended decision and an agency adopts it as the Final Agency Decision, only the agency, and not DALA, will be a party to any subsequent appeals. Generally, DALA will not be informed of the outcome of the appellate process on such cases.	Manual record for General Jurisdiction cases
	% of General Jurisdiction decisions reversed or remanded	This measure tracks decisions or recommended decisions reversed or remanded by the next administrative or judicial level for General Jurisdiction cases, divided by the total number of General Jurisdiction decisions issued. This statistic is not maintained by fiscal year as DALA normally will not know the disposition in courts until many years later. As a result, DALA reports the outcomes, to the extent it knows them, for all cases originally filed in the last five years on a rolling basis. For cases in which DALA issued a recommended decision and an agency adopts it as the Final Agency Decision, only the agency, and not DALA, will be a party to any subsequent appeals. Generally, DALA will not be informed of the outcome of the appellate process on such cases.	Manual Record



GOAL <sup>1</sup>	MEASURE	DESCRIPTION	DATA SOURCE
Develop mechanisms and procedures to minimize parties' costs and enhance customer service <sup>2</sup>	# of General Jurisdiction cases heard in remote locations	This measure tracks the total number of hearings held in remote locations.	Manual Record
Bureau of Special Education Appeals			
Ensure that staff continue to exemplify the highest level of impartiality, integrity, and expertise in the substantive areas of law applicable to DALA adjudications	% of Bureau of Special Education Appeals mediations resulting in agreement	This measure tracks the percent of Bureau of Special Education Appeals mediations resulting in agreement.	Database
Maintain current timeliness and quality of dispute resolution of special education appeals	# of Individualized Education Programs (IEPs) in the Commonwealth	This measure tracks the number of Individualized Education Programs (IEPs) in the Commonwealth. An IEP sets out an educational program for a public school student with a disability that meets federal and state requirements for special education.	DESE
	# of IEPs cases opened	This measure tracks the number of new Bureau of Special Education Appeals cases opened.	Database
	# of FIEPs conducted	This measure tracks the number of Facilitated Individualized Education Program (FIEP) meetings conducted. A FIEP is a facilitated, collaborative process between students, families and educators to develop an educational program for a public school student with a disability that meets federal and state requirements for special education.	Manual record
	# of IEP mediations conducted	This measure tracks the number of Individualized Education Program (IEP) mediations conducted. An IEP sets out an educational program for a public school student with a disability that meets federal and state requirements for special education.	Database

<sup>2</sup> One strategic plan measure for this goal, “# of cases in which a witness, party or interpreter participates remotely” refers to a program that has not begun. Since no start date has been determined for this program, the measure has been excluded.

GOAL <sup>1</sup>	MEASURE	DESCRIPTION	DATA SOURCE
	# of IEP hearings held	This measure tracks the number of Individualized Education Program (IEP) hearings held. An IEP sets out an educational program for a public school student with a disability that meets federal and state requirements for special education.	Database